

ESTTA Tracking number: **ESTTA196067**

Filing date: **03/04/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181512
Party	Defendant 5 Star Linux, Inc.
Correspondence Address	CYNTHIA R. ADWERE 1950 UNIVERSITY AVE FL 4 EAST PALO ALTO, CA 94303-2250 UNITED STATES IPDOCKETING@HOWREY.COM
Submission	Answer
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Date	03/04/2008
Attachments	Answer.PDF ( 3 pages )(43461 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

OpenTV, Inc.

Opposer,

v.

5 Star Linux, Inc.

Applicant.

Opposition No. 91181512

**ANSWER**

Application Serial No.: 77/082,330

Filing Date: January 12, 2007

Publication Date: August 28, 2007

Applicant and Defendant 5 Star Linux, Inc. ("Applicant"), through its counsel of record, hereby answers the Notice of Opposition filed by Plaintiff and Opposer OpenTV, Inc. ("Opposer") regarding the mark OPENPVR.

**I. PARTIES**

1. Applicant has no basis to either admit or deny this allegation.
2. Applicant admits this allegation.

**II. OPPOSER'S MARK, GOODS, AND SERVICES**

3. Applicant has no basis to either admit or deny this allegation.
4. Applicant has no basis to either admit or deny this allegation.
5. Applicant has no basis to either admit or deny this allegation.
6. Applicant denies this allegation.
7. Applicant denies this allegation to the extent it applies to the alleged OPENTV PVR.

**III. APPLICANT'S MARK AND SERVICES**

8. Applicant admits this allegation.

9. Applicant admits this allegation.

10. Applicant admits this allegation.

#### **IV. CLAIMS**

11. Applicant denies the allegations that “there is no issue concerning priority” and that “Opposer’s common law rights in the OPENTV PVR mark also precede Applicant’s Filing Date.” Applicant has no basis to either admit or deny the allegation “Opposer’s Marks include registrations for OPENTV that were both filed and used in commerce prior to Applicant’s Filing Date.”

12. Applicant denies this allegation.

13. Applicant has no basis to either admit or deny this allegation.

14. Applicant has no basis to either admit or deny this allegation.

15. Applicant has no basis to either admit or deny this allegation.

16. Applicant denies this allegation.

17. Applicant denies this allegation.

18. Applicant denies this allegation.

19. Applicant denies this allegation.

#### **V. REQUEST FOR RELIEF**

20. Applicant admits this allegation.

21. WHEREFORE, Applicant respectfully prays that the opposition be DENIED.

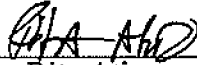
## VI. AFFIRMATIVE DEFENSES

22. Opposer is not entitled to a family mark with the surname "OPEN" because Open is a generic term used broadly in software and hardware engineering.

23. Opposer is not entitled to a family mark with the surname "OPEN" because Opposer's OPEN marks were not used and promoted together.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THIS, ANSWER TO NOTICE OF OPPOSITION, is being deposited WITH THE United States Postal Service with sufficient postage as first class mail on March 4, 2008 in an envelope addressed to counsel for Opposer: Grace Han Stanton, Esq., 1201 Third Avenue, 48<sup>th</sup> Floor, Seattle, Washington 98101-3099

Signature: 

Printed Name: Rita Atie

Respectfully submitted,

Greenberg Traurig LLP

By: 

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